

1 **KIRK-HUGHES & ASSOCIATES**
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10 **UNITED STATES BANKRUPTCY COURT**

11 **FOR THE DISTRICT OF NEVADA**

12 In re:) CASE NO.: BK-S-10-10004-BAM
13) Chapter 11
14 GERALDINE HUGHES,)
15)
16 Debtor.) Date: OST PENDING
17) Time: OST PENDING

18 **DEBTOR'S MOTION TO SELL 1820 LAVERNE CIRCLE, LAS VEGAS,**
19 **NEVADA, AND 5697 E. ARIPEA ROAD, HARRISON, IDAHO, AND**
20 **TO LIFT THE STAY AS TO THESE TWO PROPERTIES ONLY**

21 Debtor GERALDINE KIRK-HUGHES by and through her
22 attorneys, **LAW OFFICES OF KIRK-HUGHES & ASSOCIATES/PRO SE**,
23 hereby submits this Motion to this Honorable Court for an
24 Order allowing the short sale of the two (2) investment
25 properties named in the title, *supra*, and the lifting of the
26 Stay as to these two (2) sales only.

27 This Motion is based on the attached Memorandum of Points
28 and Authorities; the Declaration of the Debtor; the pleadings,
papers and other records contained in the Court's file; and
the evidence and oral argument entertained by the Court at the

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1 time of the Hearing on this Motion.

2 DATED this 16th day of August, 2010.

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KIRK-HUGHES & ASSOCIATES

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/s/ Geraldine Kirk-Hughes

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MEMORANDUM OF POINTS AND AUTHORITIES

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I. Statement of Facts

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BAC Home Loans Servicing, LP, is the beneficiary and holder of two Promissory Notes that evidence loans to Debtor in the amount of Three Hundred Fifty-nine Thousand Seven Hundred Seventeen Dollars and Seventy-four Cents (\$359,717.74) and Five Hundred Ninety-one Thousand Nine Hundred Twenty-nine Dollars and Sixty-eight Cents (\$591,929.68).

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The first Note is secured by a Deed of Trust in the amount of \$359,717.74 against certain real property owned by Debtor and located at 1820 LaVerne Circle, Las Vegas, Nevada, 89108. The second Note is also secured by a Deed of Trust but in the amount of \$591,929.68 against the real property owned by Debtor and located at 5697 E. Aripa Road, Harrison, Idaho.

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1 Due to the economic environment that has taken and
2 continues to take its toll on everyone and particularly on
3 those who have invested in real estate, the Debtor has fallen
4 into default on her obligations to the Creditor, BAC HOME
5 LOANS SERVICING, LP, with regard to the above-described real
6 properties. Because of her financial situation, the Debtor,
7 on January 3, 2010, filed a Chapter 13 Petition which was
8 converted to Chapter 11 on or about March 16, 2010.
9

10 In her Petition, the Debtor listed four (4) real
11 properties she owns, included the 1820 LaVerne Circle property
12 and the 5697 Aripa Road property. In order to increase the
13 probability of success with regard to the Debtor's Chapter 11
14 Plan, the Debtor must sell these two (2) properties on short
15 sales and has buyers for each.
16

17 In fact, BAC has informed the Debtor that it has
18 conditionally approved the short sales based on the Mortgage
19 Insurance giving its approval, which it will do if the sales
20 are approved by the Bankruptcy Court in this matter and the
21 Stay is lifted only for these specific sales.
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23 II. Statement of Authorities

24 Sale of Properties:

25 The Debtor, GERALIDINE KIRK-HUGHES, contends that this
26 Honorable Court can grant her authority to sell the above two
27 real properties pursuant to 11 USC 363(b) which states in
28

1 pertinent part: "Section 363. Use, sale, or lease of
2 property. . . . (b) (1) The trustee, after notice and a
3 hearing, may use, sell, or lease, other than in the ordinary
4 course of business, property of the estate,"

5
6 Upon granting this Motion, the Debtor, under the auspices
7 of the Las Vegas U.S. Trustee's Office, would sell to a
8 qualified buyer as a short sale the real property located at
9 1820 LaVerne Circle, Las Vegas, Nevada, 89108, and
10 specifically described as

11 STONEHAVEN: Plat Book 10, Page 12, Lot 11,
12 Block 2 as recorded in the Office of the
13 County Recorder, Clark County; APN:139-
14 19-318-020.

15 The Debtor would also sell to a qualified buyer as a short
16 sale the real property located at 5697 E. Aripa Road,
17 Harrison, Idaho, 83833, and specifically described as

18 The Southeast quarter of the Northeast quarter
19 of the Southwest Quarter of Section 3,
20 Township 49 North, Range 3 West, Boise
21 Meridian, Kootenai County, Idaho; Parcel ID
22 Number, 49N03W-03-5250.

23 These sales would benefit not only BAC but all the
24 Creditors, the Debtor and the Buyers as they would allow the
25 Debtor to modify her Chapter 11 Plan which, in turn, would
26 increase its probability of success and be a benefit to all
27 Creditors. Not having to make monthly payments on the two (2)
28 mortgages will give the Debtor more cash flow to facilitate a
Plan beneficial to the remaining Creditors.

1 As an alternative to selling the Aripa Property on a short
 2 sale, this property is covered by the Agreement reached between
 3 Countrywide and the Attorney General for the State of
 4 California as Idaho has joined several other States in this
 5 Agreement. Therefore, the Bank of America, which acquired
 6 Countrywide in 2008, must enter into a Loan Modification with
 7 the Debtor herein pursuant to the terms of this Agreement.

9 **Lift Stay Re: Properties:**

10 In order to effectuate the sales, this Court will have to
 11 grant the lifting of the Automatic Stay with regard to these
 12 two (2) properties pursuant to 11 USC 362(d)(3) which states:

14 (d) On request of a party in interest and after notice
 15 and a hearing, the court shall grant relief from the
 16 stay provided under subsection (a) of this section,
 such as by terminating, annulling, modifying, or
 conditioning such stay- . . .

17 (3) with respect to a stay of an act against
 18 single asset real estate under subsection (a),
 19 by a creditor whose claim is secured by an
 20 interest in such real estate, unless, not later
 21 than the date that is 90 days after the entry of
 the order for relief (or such later date as the
 court may determine for cause by order entered
 within that 90-day period) or 30 days after the
 court determines that the debtor is subject to
 this paragraph, whichever is later-

22 (A) the debtor has filed a plan of
 23 reorganization that has a reasonable
 24 possibility of being confirmed within a
 reasonable time; . . .

25 Just as with granting Debtor's Motion to sell the two (2)
 26 properties at issue herein, the lifting of the Automatic Stay
 27 will benefit not only BAC but all the Creditors, the Debtor and
 28

1 the Buyers as this would allow the Debtor to modify her Chapter
2 11 Plan which, in turn, would increase the probability of
3 success all to the benefit of all Creditors. Not having to
4 make monthly payments on the two (2) mortgages will give the
5 Debtor more cash flow to facilitate a Plan beneficial to the
6 remaining Creditors.
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8 **III. Conclusion**

9 For the reasons set forth above, the Debtor, GERALDINE
10 KIRK-HUGHES, respectfully requests that this Court will issue
11 an Order directing her to sell the LaVerne Circle and the Aripa
12 Road properties. Similarly, the Debtor requests that this
13 Court will terminate the Stay as to these two (2) properties so
14 that the sale of each can go immediately into Escrow with the
15 sales being completed forthwith.
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17 DATED this 16th day of August, 2010.

18 **KIRK-HUGHES & ASSOCIATES**

19 */s/ Geraldine Kirk-Hughes*

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